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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/773,645	02/06/2004	David Wilson Shaw	SMTT 330	7618
23581	7590	03/21/2006		
KOLISCH HARTWELL, P.C. 200 PACIFIC BUILDING 520 SW YAMHILL STREET PORTLAND, OR 97204			EXAMINER PICO, ERIC E	
			ART UNIT 3654	PAPER NUMBER

DATE MAILED: 03/21/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/773,645	Applicant(s) SHAW, DAVID WILSON	
	Examiner Eric Pico	Art Unit 3654	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 27 December 2005.
- 2a) ☒ This action is FINAL. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-13 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-13 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 112

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claim 4 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

3. **Claim 4** recites the limitation "the container" in Claim 4, Line 4. There is insufficient antecedent basis for this limitation in the claim.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claim(s) 1-5 and 9 is/are rejected under 35 U.S.C. 102(b) as being anticipated by Habicht U.S. Patent No. 5489182.

6. **Regarding claim 1**, Habicht discloses a storage apparatus comprising a storage portion, referred to as container 48, a support structure 12 to support the storage portion 48, a carriage 108 connected to the storage portion 48 and movable with respect to the support structure 12 to move the storage portion 48 between a loading position and a

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storage position, and an actuator mechanism 32 to control movement of the carriage 108.

7. **Regarding claim 2**, Habicht further discloses the support structure 12 includes at least one surface to guide movement of the carriage 108 between the loading and storage positions of the storage portion 48.

8. **Regarding claim 3**, Habicht further discloses the support structure 12 comprises a post 100 and a surface to guide movement of the carriage 108 comprises a side 116 of the post 100.

9. **Regarding claim 4**, Habicht further discloses the carriage 108 comprises a pair of spaced members 26 positionable on opposite sides of the post 100 to define a platform for supporting a container 48 and rollers 110 rotatably mounted between the spaced members 26 to engage the side of the post 100 to permit slidable movement of the carriage 108 along the post 100.

10. **Regarding claim 5**, Habicht further discloses the post 100 is substantially vertical and the carriage 108 includes two rollers 110 on opposite sides of the post 100 to engage sides of the post 100.

11. **Regarding claim 9**, Habicht further discloses rails 26 below the storage portion to receive and support articles to be stored.

12. Claim(s) 1-7 is/are rejected under 35 U.S.C. 102(b) as being anticipated by Vermette et al. U.S. Patent No. 4421209.

13. **Regarding claim 1**, Vermette et al. discloses a storage apparatus comprising a storage portion, created by fork lift table 58, a support structure, referred to as upright

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post 12, to support the storage portion, a carriage, not numbered but shown in Figures 1-5, connected to the storage portion and movable with respect to the support structure 12 to move the storage portion between a loading position and a storage position, and an actuator mechanism, referred to as winch device 46, to control movement of the carriage.

14. **Regarding claim 2**, Vermette et al. further discloses the support structure includes surfaces to guide movement of the carriage between the loading and storage positions of the storage portion.

15. **Regarding claim 3**, Vermette et al. further discloses the support structure comprises a post 12 and the surface to guide movement of the carriage comprises a side of the post 12.

16. **Regarding claim 4**, Vermette et al. further discloses the carriage comprises a pair of spaced members 54, 56 positionable on opposite sides of the post 12 to define a platform for supporting, rollers 74, 76 rotatably mounted between the spaced members 54, 56 to engage the side of the post 12 to permit slidable movement of the carriage along the post 12.

17. **Regarding claim 5**, Vermette et al. further discloses the post 12 is substantially vertical and the carriage includes two rollers 74, 76 on opposite sides of the post 12 to engage sides of the post 12.

18. **Regarding claim 6**, Vermette et al. further discloses rollers 74, 76 are vertically offset from each other.

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19. **Regarding claim 7**, Vermette et al. further discloses the offset rollers 74, 76 are supported by a pair of plates 54, 56 on opposing sides of the post 12, the pair of plates 54, 56 supporting a beam, referred to as fork lift table 58, extending from the plates 54, 56 in a cantilever configuration to define the platform 58 to support the storage portion whereby the storage portion exerts a force on the plates 54, 56 that tends to bias the offset rollers 74, 76 into engagement with the sides of the post 12.

Claim Rejections - 35 USC § 103

20. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

21. Claim(s) 8 is/are rejected under 35 U.S.C. 103(a) as being unpatentable over Habicht U.S. Patent No. 5489182 in view of Chandaria U.S. Patent No. D473377.

22. **Regarding claim 8**, Habicht is silent concerning the storage portion comprises a box structure.

23. Chandaria teaches a storage portion comprised of a box structure having a base, an upstanding rear wall, a pair of upstanding, opposed end walls, and an upstanding front wall to define an interior region for holding article to be stored, the front wall of the container having a section that is lower than the end walls to define an opening for access to the interior region.

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24. It would have been obvious to one of ordinary skill in the art at the time of the invention to make the container disclosed by Habicht a box structure container taught by Chandaria to facilitate the accessibility of the container interior.

25. Claim(s) 10 and 11 is/are rejected under 35 U.S.C. 103(a) as being unpatentable over Habicht U.S. Patent No. 5489182 in view of Hansl U.S. Patent No. 6923612.

26. **Regarding claim 10**, Habicht discloses storage apparatus comprised of rails 26.

27. Habicht is silent concerning extendable rails.

28. Hansl teaches rails 15 extendable from a stowed position below a container 4 to an extended position to receive support articles 4 to be stored.

29. It would have been obvious to one of ordinary skill in the art at the time of the invention to add extendable rails as taught by Hansl to the storage apparatus disclosed by Habicht to increase the distance covered by the rails.

30. **Regarding claim 11**, Habicht is silent concerning rails configured to telescope between a stowed and extended positions.

31. Hansl teaches rails 15 configured to telescope between a stowed and extended positions.

32. It would have been obvious to one of ordinary skill in the art at the time of the invention to configure the rails disclosed by Habicht to telescope between a stowed and extended position as taught by Hansl to increase the distance covered by the rails.

33. Claim(s) 12 is/are rejected under 35 U.S.C. 103(a) as being unpatentable over Vermette et al. U.S. Patent No. 4421209 in view of Wilke et al. U.S. Patent No. 5368130.

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34. **Regarding claim 12**, Vermette et al. discloses the actuator mechanism 46 comprises a hoist mounted to the support structure 12 and connected to the carriage to move the carriage with respect to the support structure 12.

35. Vermette et al. is silent concerning the actuator mechanism comprising a chain hoist.

36. Wilke et al. teaches an actuator mechanism comprising a chain hoist.

37. It would have been obvious to one of ordinary skill in the art at the time of the invention to provide the actuator mechanism disclosed by Vermette et al. with a chain hoist disclosed by Wilke et al. to facilitate the strength of the hoist.

Response to Arguments

38. Applicant's arguments filed 12/27/2005 have been fully considered but they are not persuasive.

39. Regarding applicant's argument that Habicht U.S. Patent No. 5489182 does not include a storage portion. Applicant does not disclose any evidence why container 48 cannot be considered a storage portion. Applicant has disclosed the container provides for the discharging of fluent material from the container but does not discuss why a container that provides for the discharging of fluent material from the container cannot be adapted to provide storage. Furthermore, the term "storage portion" imparts no particular structure, therefore Habicht U.S. Patent No. 5489182 recites the claimed elements of claim 1.

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40. Regarding applicant's argument Habicht does not include "two rollers on opposite sides of the post" Habicht clearly shows in both Figures 8 and 9 the carriage including two rollers 110 in Figure 8 and 114 in Figure 9 on opposite sides, being the left and right side, of the post 150, 160 to engage sides of the post. Applicant fails to disclose any why Habicht does not include "two rollers on opposite sides of the post."

41. Regarding applicant's argument that the rollers of Simmons, as shown in Figures 2 and 3, do not include rollers on opposite sides of the post, but rather a roller on one side of the post and an opposing roller within the internal structure of the post. Simmons clearly shows in Figure 2 and 3 rollers on opposite sides of a post, the post being the wall of column 12.

42. Applicant's arguments with respect to claim 7 have been considered but are moot in view of the new ground(s) of rejection.

43. In response to applicant's argument that Chandaria U.S. Patent No. D473377 is nonanalogous art, it has been held that a prior art reference must either be in the field of applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the applicant was concerned, in order to be relied upon as a basis for rejection of the claimed invention. See *In re Oetiker*, 977 F.2d 1443, 24 USPQ2d 1443 (Fed. Cir. 1992). In this case, Chandaria U.S. Patent No. D473377 and Habicht U.S. Patent No. 5489182 are both containers. Applicant discloses no evidence why the container disclosed by Habicht cannot be a storage container.

44. In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies

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(i.e., the arms of claim 10 are extended from underneath the container) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

45. In response to applicant's argument that Hansl does not disclose "the rails are extendible from a stowed position below the storage portion to an extended position to receive support articles to be stored", a recitation that the rails are extendable does not result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of extending from a stowed position below the storage position to an extended position to receive support articles to be stored, then it meets the claim.

Conclusion

46. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Williams U.S. Patent No. 2576660, Vermette U.S. Patent No. 3957137, Pokus U.S. Patent No. 5152374, Kambara U.S. Patent No. 5160238, Rockwood U.S. Patent No. 5245940, Ehrlich U.S. Patent No. 5318335.

47. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not

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mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Eric Pico whose telephone number is 571-272-5589. The examiner can normally be reached on 6:30AM - 3:00PM M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Katherine Matecki can be reached on 571-272-6951. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

EEP


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